

JAMES O. BREENE, JR.

IBLA 78-602 Decided December 13, 1978

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offer W 63858.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

The BLM may reject any offer to lease public lands for oil and gas, upon a determination supported by facts of record that the leasing would not be in the public interest because it is incompatible with uses of the lands which are worthy of preservation. Where the land is being used as a habitat for mule deer and elk, is a natural scenic asset, and has recreational, archeological and paleontological values, and where BLM determines that oil and gas drilling operations would result in unavoidable adverse impact on these attributes, rejection of the lease offer will be affirmed, in the absense of compelling countervailing reasons.

APPEARANCES: James O. Breene, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

James O. Breene, Jr., appeals from the July 31, 1978, decision of the Wyoming State Office, Bureau of Land Management (BLM), rejecting his noncompetitive over-the-counter oil and gas lease offer, for the following reasons:

The areas involved in this lease offer are considered to have very high values for wildlife and recreation. The present MFP decision states that Whoopup Creek, which is

within the boundaries of the proposed lease area, be given protective status because of archeological, scenic values, and a proposal that this area be designated a natural area. Numerous pictographs are found on the rock canyon walls in Whoopup Creek and marine fossil beds are scattered throughout the area. These are non-renewable resources and if oil and gas exploration is allowed in the lease offer area before further study of these values are [sic] undertaken, the Bureau of Land Management would be in direct conflict with the Antiquities Act, National Historical and Preservation Act, the Archeological and Historical Data Conservation Act, and Executive Order 11593.

Breene asserts on appeal that the Government's obligation to protect the lands in question may be served, not by denying mineral leasing operations in the area, but by requiring instead an investigation, at such time as he wishes to enter the lands, to determine which parts of the lands could be used without significant degradation. He suggests that BLM could identify those areas needing protection, take inventory of the resources to be protected, and specify "any necessary zones of nondisturbance." He suggests finally that such reasonable control over surface-disturbing activity could be accomplished by the issuance of the lease subject to protective stipulations.

[1] The Secretary of the Interior, through BLM, his duly authorized representative, has the authority to refuse to lease lands for oil and gas purposes, even if the lands have not been withdrawn from the operation of the general mining and mineral leasing laws. Dell K. Hatch, 34 IBLA 274 (1978); L. A. Idler (Supp.), 28 IBLA 8 (1976); Cartridge Syndicate, 25 IBLA 57, 58 (1976); Rosita Trujillo, 21 IBLA 289 (1975); T. R. Young, Jr., 20 IBLA 333, 335 (1975); Rosita Trujillo, 20 IBLA 54 (1975); Richard K. Todd, 68 I.D. 291, 295-96 (1961), aff'd sub nom. Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied, 383 U.S. 912 (1966). As the Supreme Court noted in Udall v. Tallman, 380 U.S. 1, 4 (1963):

The Mineral Leasing Act of 1920, 41 Stat. 437, 30 U.S.C. § 181 et seq. (1958 ed.), gave the Secretary of the Interior broad power to issue oil and gas leases on public lands not within any known geological structure of a producing oil and gas field. Although the Act directed that if a lease was issued on such a tract, it had to be issued to the first qualified applicant, it left the Secretary discretion to refuse to issue any lease at all on a given tract. United States v. Wilbur, 283 U.S. 414. [Emphasis supplied.]

We have held that BLM may decide to refuse to issue a lease, provided that it sets forth its reasons for doing so, and provided that the background data and facts of record support the conclusion that the refusal is required in the public interest. Cartridge Syndicate, *supra* at 59. Where the record describes a devotion of the land to a public purpose which is worthy of preservation and indicates that the development of an oil and gas field would be incompatible with this public purpose and would be less in the public interest than preserving the status quo, BLM's decision not to issue the lease will be affirmed in the absence of compelling reasons for its modification or reversal. Duncan Miller, 31 IBLA 371 (1977); Duncan Miller, 31 IBLA 351 (1977); Duncan Miller, 30 IBLA 350, 352 (1977); L. A. Idler (Supp.), *supra* at 10; Rosita Trujillo, *supra* at 291; Dean W. Rowell, 13 IBLA 249 (1973); Jack E. Griffin, 7 IBLA 155 (1972).

The record in the instant case contains material indicating that the lands for which appellant applied are presently devoted to public purposes which are worthy of preservation. Specifically, BLM's manager in the area near these lands reported that they have very high value as a wildlife sanctuary (mule deer and elk) and as a recreational site. Whoopup Creek, located within these lands, is proposed to be designated as a natural area. Additionally, the lands have archeological and paleontological value, in that numerous pictograms and fossil beds are found there. On site inspections indicate that severe topography and fragile soils there would make rehabilitation of any well site "very expensive and impossible in many cases." The Geological Survey reported that the prospects of finding oil and gas there "could not be considered too favorable." BLM's decision was based on convincing reports showing as a matter of fact that the granting of this lease would not be in the public interest, but rather would conflict with BLM's responsibilities under various conservation acts.

Appellant's suggestions that the lease be granted, subject either to identification by BLM of "zones of nondisturbance" or to protective stipulations, are unacceptable. The record shows that the lands are fragile enough to justify an outright rejection of the lease offer in order to preserve their present value at this time. Appellant has shown no compelling reason for modifying or reversing BLM's decision, and we conclude that it should be affirmed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur.

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge

